

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

Basil Jacob Kyles #11311-014,	)	C/A No.: 6:12-cv-02735-GRA
	)	
Petitioner,	)	
	)	
v.	)	<b>ORDER</b>
	)	
Kenny Atkinson,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court for review of Magistrate Judge Kevin F. McDonald's Report & Recommendation filed on October 1, 2012, and made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c), D.S.C. Petitioner Basil Jacob Kyles (hereinafter "Petitioner") filed this action on September 21, 2012, pursuant to 28 U.S.C. § 2241. ECF No. 1. Under established local procedure in this judicial district, Magistrate Judge McDonald made a careful review of the *pro se* Petition pursuant to the procedural provisions of 28 U.S.C. § 1915, 28 U.S.C. § 1915A, and the Anti-Terrorism and Effective Death Penalty Act of 1996. For the reasons stated herein, this Court adopts the magistrate's Report and Recommendation in its entirety.

Petitioner, proceeding *pro se*, is an inmate incarcerated at FCI-Edgefield, a facility of the Federal Bureau of Prisons. On September 21, 2012, Petitioner commenced this action for Writ of Habeas Corpus in which he alleges that his First Amendment rights have been violated. ECF No. 1. Petitioner claims that when he transferred to FCI-Edgefield from FCI-Otisville, prison officials kept seven of Petitioner's religious books and have ignored his requests to have them returned to his possession. *Id.* Magistrate Judge McDonald recommends that this Court dismiss Petitioner's § 2241 Petition without

prejudice, because Petitioner's claims should be raised in a civil rights or other more general civil complaint, not a habeas petition. *Report and Recommendation*, ECF No. 8.

Petitioner brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *See Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate with instructions.” *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983). Furthermore, a failure to object waives a petitioner's right to appeal.<sup>1</sup> *Carr v. Hutto*, 737 F.2d 433, 434 (4th Cir. 1984). In the instant case, Petitioner did not file any objections to the Report and Recommendation.

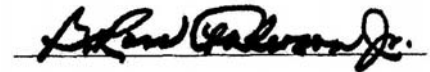
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<sup>1</sup> In *Carr v. Hutto*, 737 F.3d 433, 434 (4th Cir. 1984), the Fourth Circuit held that a *pro se* habeas petitioner was precluded from seeking appellate review of the District Court's adoption of the magistrate judge's report and recommendation, because he had not objected to the report. In *Wright v. Collins*, 766 F.2d 841, 846 (4th Cir. 1985), the Court held that a petitioner will be able to appeal if he/she was not properly warned of the consequences of failing to object to the

After a thorough review of the Report and Recommendation, this Court finds that it applies sound legal principles to the facts of this case. Therefore, this Court adopts it in its entirety.

**IT IS THEREFORE ORDERED** that Petitioner's § 2241 Petition is dismissed WITHOUT prejudice.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read "G. Ross Anderson, Jr.", is written over a horizontal line.

G. Ross Anderson, Jr.  
Senior United States District Judge

November 19, 2012  
Anderson, South Carolina

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report. In this case, Petitioner received a copy of the Report and Recommendation, as well as a "Notice of Right to File Objections to the Report and Recommendation." The Notice explicitly, and in bold lettering, stated: "Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based on such Recommendation." ECF No. 8.